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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,775	11/26/2003	Rudolph Schoendienst	BRECO 3.0-004	7222

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EXAMINER

DEUBLE, MARK A

ART UNIT	PAPER NUMBER
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3651

DATE MAILED: 02/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/722,775

Applicant(s)

SCHOENDIENST, RUDOLPH

Examiner

Mark A. Deuble

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11-4-04
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-44 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26-44 is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,11-13 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 3,4,8-10,14-20 and 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 7, and 21-23 rejected under 35 U.S.C. 102(b) as being anticipated by Gelzer (U.S. Patent No. 3,737,024), as in the paper dated July 1, 2004.

No new limitations have been added to the claims and thus the rejection of the previous office action is reproduced below.

Gelzer shows a conveyor system belt assembly comprising a flexible belt 12 having a longitudinal axis and a plurality of plates 25 that are substantially T-shaped in cross section as illustrated in Figs. 2 and 3. Each of the plates has a substantially horizontal portion 27 with a reinforcing rib extending over a short distance between the ends of the horizontal portion and a substantially vertical portion 26 fastened to the belt by a press fit created by rails 13 and 14. The vertical portion of each plate is seated in substantially vertical channels transverse to the longitudinal axis of the belt formed between the teeth of the belt. Because the rails support the belt and the vertical portions of the belt from both sides, deflection of the vertical portion of the plate from the vertical axis of the belt would be less than 5° as the horizontal portion receives a load to be transported around the conveyor system. Thus Gelzer shows all the structure required by claims 1-2 and 21-23.

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In regard to claim 7, it should be noted that a recitation of the intended use of the claimed invention does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations if the prior art structure is capable of performing the intended use. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Therefore, while the vertical portions of the plates are located on the opposite side of the belt from the drive pulley 20 so that they do contact the drive pulley, they are capable of providing a drive surface for driving the belt assembly through the conveyor system because could interact with a drive placed on the opposite side of the belt from the drive pulley 20.

Applicant's representative argues that Gelzer fails to show T-shaped fixtures fastened to a flexible belt because the T-shaped fixtures 10 of Gelzer are in sliding contact with the belt and because they are slidably removable from the surface of the guide track and thus are not fastened to the belt. The examiner respectfully disagrees for several reasons. First, the claims do not require "t-shaped fixtures"; they require "T-shaped plates." While the difference between the plates and fixtures is minor, it should be noted that the previous office action referred to the plate assemblies 25 and 26 as forming the T-shaped plates and not the entire work supporting fixture 10 as applicant's representative discusses at length in his remarks. Second, the vertical portions 26 of the T-shaped plates are not in sliding contact with the outer surface of the belt 12 because, as applicant's representative points out, the members are intermeshed with the belt as can be seen in Fig. 5. This intermeshing, caused by rails 13 and 14 pressing the vertical portion of the plate against the belt so that the plate moves with the belt, may be viewed as a way in which the vertical portion is "fastened" to the belt when the word is given its broadest reasonable interpretation. Stated another way, the claims do not require a fastener; they only require that the

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vertical portion be fastened to the belt in some unspecified way. Finally, while the T-shaped plates of Gelzer are removable, this does not mean that they are not, in some senses, fastened to the belt. Many articles in the conveyor field are removably fastened to conveyor belts so that they may serve different functions.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 5-7, 11-13 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gelzer in view of Patin (U.S. Patent No. 5,339,938), as in the paper dated July 1, 2004.

No new limitations have been added to the claims and thus the rejection of the previous office action is reproduced below.

Gelzer shows generally all the structure required by the claims except for the polymeric belt of claim 5, the wires of claim 6, the openings in the belt and the vertical portion of the plate that receive fasteners therethrough to connect the plates to the belt of claims 11-13, the reinforcement rib of claim 23, and the interlocking horizontal portions of claim 24. However, Patin shows a flexible belt with a plurality of interlocking plates 11 fastened thereto by means of a fastener 15 extending through holes in the belt and the plate. Patin generally teaches that the fastener arrangement provides a simple and effective way to attach a plate to a flexible belt and that shaping plates so that they interlock advantageously provides a continuous article support

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surface. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Gelzer so that the vertical portions of the plates are fastened to the belt with fasteners extending through holes in the belt and the vertical portion of the plates and so that the horizontal portions of the plates are shaped so that they interlock according to the teachings of Patin. When this is done, the resulting apparatus would have all the structure required by claims 1-2, 7, 11-13 and 21-22 and 24.

In regard the claims 5 and 6, it should be noted that the use of polymeric materials for forming toothed belts and the use of wires for reinforcing such belts is well known in the art and therefore the use of a wire reinforced polymeric material for the belt of Gelzer is deemed to have been an obvious design choice absent some disclosure in the applicant's specification of some unusual advantage or result. *In re Kuhle*, 188 USPQ 7 (CCPA 1975).

Applicants representative argues that Patin does not teach the fastening of T-shaped plates to a flexible belt and that even if Patin had such a teaching, it may not be combined with Gelzer to provide a fastener for attaching the T-shaped plates of Gelzer to the flexible belt because to do so would destroy the intended function of Gelzer to provide a system in which the fixtures 10 are vertically removable from the guide track. Once again, the examiner respectfully disagrees for several reasons. First, while the fasteners 15 of Patin are used to attach plates or blocks 11 that are not T-shaped to a belt, the general teaching of using an insert fastener 15 or a bolt 16 to attach a rigid body to a belt may be applied to the T-shaped plates of Gelzer without undue experimentation. Furthermore, using an inserted fastener or bolt 16 to attach the T-shaped plates of Gelzer to the belt would not destroy intended function of Gelzer to provide a system in which the fixtures 10 are vertically removable from the guide track. This is because the insert

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fastener 15, and even more clearly, the bolt 16 may be removed in order to allow the plates to be lifted from the guide track.

Allowable Subject Matter

5. Claims 26-44 are allowed.
6. Claims 3-4, 8-10, 14-20 and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

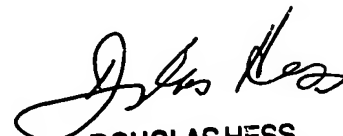
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (703) 305-9734. The examiner can normally be reached on Monday through Friday except for alternate Fridays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher P Ellis can be reached on (703) 308-2560. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

md


DOUGLAS HESS
PRIMARY EXAMINER
2-3-05